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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of Greycliff Wind Prime, LLC To Set Terms and Conditions for Qualifying Small Power Production Facility Pursuant to M.C.A. § 69-3-603	Cause No. D2015.8.64 GREYCLIFF WIND PRIME, LLC'S RESPONSE TO NORTHWESTERN ENERGY'S MOTION TO VACATE DEADLINES IN PROCEDURAL ORDER NO. 7436
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Petitioner Greycliff Wind Prime, LLC (hereinafter "Greycliff") hereby submits this response to NorthWestern Energy's (hereinafter "NWE") motion to vacate deadlines in the Montana Public Service Commission's (hereinafter "Commission") procedural order No. 7436 in the above-captioned docket. Greycliff has agreed the schedule needs to be adjusted, but believes there is sufficient flexibility so as not to vacate the hearing date in this matter. There are several arguments offered by NWE which Greycliff believes to be legally or factually incorrect.

First, NWE is not the petitioner and thus has no right to "waive" the 180 day deadline set forth in Montana's Mini-PURPA, M.C.A. §§ 69-3-601 through -604. Greycliff filed the petition and thus it is Greycliff's decision whether to waive the hearing date in order to extend the proceeding beyond 180 days. If NWE had filed the petition, it would correspondingly have a right to a Commission decision within 180 days. For the Commission to attribute to respondents a right to waive the statutory deadline would be illogical and poor public policy. If a respondent to a petition could waive statutory deadlines particularly where, as here, the petitioner needs a timely decision to proceed with financing and construction of its project, all the respondent need

do is to commence some sort of delay thus depriving the petitioner of its statutory right to a Commission decision within the legislatively established deadline. Not only would this be an illogical result, such a policy would result in the legislative deadline being utterly meaningless, as it would create a perverse incentive for delays. Such delays may deprive a petitioner of the right to a timely decision which would be particularly egregious since the petitioner presumably filed the petition to seek the timing and protections afforded by the statute.

Nor does the statute itself support the idea that a respondent has the right to waive the statutory deadline. M.C.A. § 69-3-603(2)(a) states that the Commission shall “determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 180 days of receipt of the petition ...” Thus, Under M.C.A. § 69-3-603(2) (a), a petition is filed, thus entitling the petitioner rather than the respondent with a right to a decision within 180 days. There is no other reasonable construction of the statute.

Second, the Commission need not decide the issue of whether respondents have a right to waive the 180 day deadline in order to resolve the scheduling issue in this case. There is sufficient flexibility in the procedural schedule that the Commission should use in order to preserve the hearing date and to render a decision within 180 days. NWE will not be prejudiced if the following schedule is adopted:

- Greycliff agrees that NWE should not be required to file its responsive testimony on October 30, 2015;
- Once the PSC acts on Greycliff’s proposed motion for protective order, submitted on October 20, 2015, Greycliff will produce the generation data for which it seeks confidential trade secret protection to NWE and the PSC;
- Presuming the Commission timely acts on this motion, NWE and the PSC should have the generation data in hand well prior to October 30, 2015;
- Moving back the deadline for NWE’s intervenor testimony (and ostensibly, that of the Montana Consumer Counsel (“MCC”) to November 13, 2015, should reasonably accommodate NWE’s existing two week window between receiving the data and its prefiled testimony;

- Moving back the deadline for intervenor data requests to November 30, 2015, and the corresponding deadline for intervenors (NWE and MCC) to respond to data requests until December 13, 2015, would provide two weeks for such requests to be answered, just as is the case under the current procedural schedule;
- The only other event currently established in procedural order 7436 in December is pre-hearing memoranda by all parties, which are presently due December 18, 2015. Preparing pre-hearing memoranda five days after receiving NWE's responses to data requests would presumably be more judicial to Greycliff than to the intervenors;
- Since Greycliff is not provided with the opportunity for written rebuttal, there is no intervening event between the deadline for pre-hearing memoranda on December 18, 2015, and the scheduled hearing date of January 11, 2015.

In conclusion, there would be very little prejudice to NWE (or MCC, should it choose to submit testimony) if the Commission were to adopt the foregoing proposed schedule. The inconvenience of this proposed schedule to Greycliff is slight, but it is a burden that Greycliff will gladly incur to preserve the hearing date. There is simply no reason to vacate the hearing date or for the Commission to even consider a need to waive the 180 day legislatively-mandated deadline. NWE's remedy is too extreme and unnecessary in light of the current schedule which currently has one scheduled event the entirety of December, 2015.

For the foregoing reasons, Greycliff requests the Commission amend the current procedural schedule consistent with Greycliff's suggested revisions as set forth above.

RESPECTFULLY SUBMITTED THIS 22ND DAY OF OCTOBER, 2015

UDA LAW FIRM, P.C.

By: _____

Michael J. Uda

Attorney for Greycliff Wind Prime, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 22nd day of October, 2015 upon the following by first class mail postage pre-paid:

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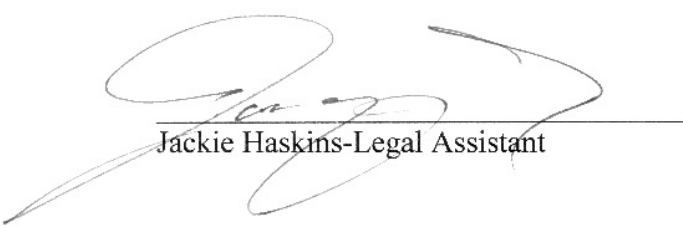
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I hereby certify an original was e-filed, and six copies of the foregoing were hand-delivered to the following:

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